

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

RACHELE J. GILBERT,

*Appellant,*

v.

Case No. 12-ABL-05-0092

BOWLING GREEN STATE UNIVERSITY,

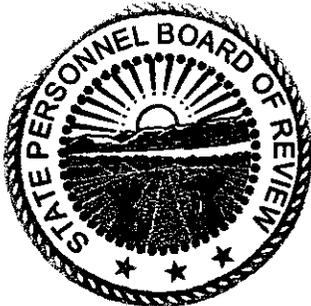
*Appellee*

**ORDER**

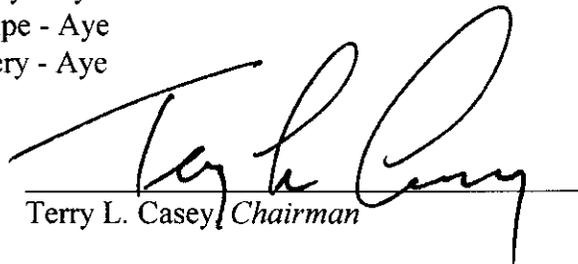
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the abolishment of Ms. Gilbert's position is **AFFIRMED**.



Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
Terry L. Casey *Chairman*

**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, March 21, 2013.

  
Clerk

**NOTE:** Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

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**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

Rachele J. Gilbert,

Case No. 2012-ABL-05-0092

*Appellant,*

v.

February 7, 2013

Bowling Green State University,

BETH A. JEWELL

*Appellee.*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant's timely appeal of her July 6, 2012, layoff from employment with Appellee, Bowling Green State University, following the abolishment of her position as a part-time Computer Operator 1 within Appellee's Information Services Department. A record hearing was held on September 28, 2012. Rachele Gilbert, Appellant, was present at the record hearing and represented herself. Appellee was represented at record hearing by Rory P. Callahan and E. Linda Ubokudom, Assistant Ohio Attorneys General. Closing arguments were filed by both parties on October 29, 2012.

On May 3, 2012, Appellee gave written notice to Ms. Gilbert that her position of employment with Appellee as a part-time Computer Operator<sup>1</sup> would be abolished and that she would be laid off effective June 8, 2012. Appellee notified Ms. Gilbert on May 25, 2012, that the abolishment date was extended to July 6, 2012. Ms. Gilbert's position was abolished and she was laid off on July 6, 2012.

**STATEMENT OF THE CASE**

Four witnesses presented testimony at hearing: Appellant; John Ellinger, Appellee's Chief Information Officer; Marsha Serio, Appellee's Manager of Employee and Labor Relations; and Danee Gunka, Customer Service Manager within Appellee's Technology Support Center. References to Appellant's Exhibits in the record are indicated parenthetically by "Appellant Ex.," followed by the exhibit letter(s). References to Appellee's Exhibits in the record are indicated parenthetically by "Appellee Ex.," followed by the exhibit number(s). The testimony and exhibits form the basis for the Findings of Fact.

## FINDINGS OF FACT

Rachele Gilbert first became employed by Appellee in October 2004. As a part-time Computer Operator 1, Ms. Gilbert worked on Saturdays and Sundays in Appellee's Information Technology Services Department. Ms. Gilbert's position was within the Technical Support Center (TSC"), which was informally known as the "help desk." Ms. Gilbert's Computer Operator 1 duties included monitoring and maintenance of the mainframe computers and servers to ensure proper functioning and backup, running and checking nightly batch jobs and checking output, mounting and retrieving tapes from the library, and printing to the high-speed laser printer and scanner. (Gilbert; Appellee Exh. 2) In addition to Computer Operator 1s, Technology Support Specialist ("TSS") positions were within the TSC. Ms. Gilbert primarily worked alone on her weekend shifts, seeing other TSC staff only briefly during shift changes, and infrequently when she attended a training session held during the week. (Gilbert)

John Ellinger became employed by Appellee in September 2010. As Appellee's Chief Information Officer, Mr. Ellinger is responsible for the computer network, servers, data center, classroom technology, help desk, and desktop support. After Mr. Ellinger was hired, Appellee began to migrate away from its mainframe computer system. With the completion of this migration, the need for backup storage tapes was eliminated, as were the high speed printing and scanning functions. During this transition, Ms. Gilbert was assigned Level 1 desktop support duties, including answering the phone, re-setting passwords, and writing incident tickets for computer problems that were reported by phone, email, or instant messaging. Ms. Gilbert directed problems with personal computers, laptops, network printing, and re-imaging to Level 2 support for evaluation and resolution. Ms. Gilbert notified Level 3 support when the system failed or the system alarm went off. Ms. Gilbert continued to perform such mainframe computer system duties as remained during the transition. (Ellinger, Gilbert)

Between September 2010 and February 2012, Mr. Ellinger determined that the TSC would function more economically and efficiently if it were staffed with only full-time skilled computer support positions. He recommended, and Appellee posted and filled, 10 additional full-time TSS positions to provide Level 1 and Level 2 help desk and desktop support. The new positions were posted in January, May, and November 2011. Ms. Gilbert did not apply for any of the new full-time

positions.<sup>1</sup> Mr. Ellinger determined that utilizing full-time skilled staff would result in efficiency gains through skill development, and further explained that staffing the help desk with Level 2 support results in the end user reaching someone who can solve the problem rather than merely report it and send it on to someone else to resolve.<sup>2</sup> All TSS positions are now full time and perform both Level 1 and Level 2 desktop support duties. The workweeks of the full-time TSS positions are staggered such that those employees who cover weekend shifts are now full-time employees.

As part of the elimination of the mainframe computer system, the computer information systems facility became a "light's-out" facility, meaning that staff are no longer present in the data center to monitor the computer system; instead, an automatic alarm system is in place. If the alarm is activated, alarms are sent to the help desk, and pages and text messages are sent to other Information Technology staff.

After the full-time TSS positions were filled and the migration away from the mainframe computer system was completed, by April 2012, Mr. Ellinger concluded that the Computer Operator 1 positions, as well as a Software Specialist 1 position with mainframe programming duties, were no longer needed and recommended that these positions be abolished. (Ellinger) Mr. Ellinger prepared a written rationale and sent it to Rebecca Ferguson, Appellee's Chief Human Resources Officer. Mr. Ellinger recommended the abolishment of these positions, including Ms. Gilbert's, for reasons of economy and efficiency. Through the abolishment of these positions, Appellee would save more than \$83,000 per year, while still maintaining an adequate level of information technology support services. (Appellee Exh. 3)

On May 3, 2012, Ms. Gilbert met with Mr. Ellinger and Marsha Serio, Appellee's Manager of Employee and Labor Relations. Mr. Ellinger and Ms. Serio informed Ms. Gilbert that her position would be abolished "due to a declining budget within the University and as a result of reorganization for efficiency within the Division of Information Technology." Appellee informed Ms. Gilbert of her retention points and that her low number of points meant that she was unable to displace into another position. Ms. Gilbert understood that she had fewer retention points than

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<sup>1</sup> Ms. Gilbert works full time Monday through Friday as a Treasury Specialist for the Toledo Public School District Board of Education, where she has been employed for 15 years.

<sup>2</sup> Part-time student workers always have been, and continue to be, employed by Appellee to answer phones and create incident tickets.

other employees in her classification because her position was part time. (Gilbert; Appellee Exhs. 5, 7)

Ms. Gilbert filed a timely appeal of her job abolishment. On May 25, 2012, Appellee informed Ms. Gilbert that it was extending the date of the abolishment from June 8, 2012 to July 6, 2012. (Appellee Exh. 12) On July 6, 2012, Ms. Gilbert's position was abolished.

### **ANALYSIS, DISCUSSION, AND CONCLUSIONS OF LAW**

In order to successfully defend a contested abolishment, not only must an appointing authority demonstrate adequate justification for the abolishment of a position, but also it must also show compliance with the procedural requirements set forth in the Ohio Revised Code and Ohio Administrative Code. R.C. 124.321-124.327. The record reflects that Appellee's notification to Appellant complied with the procedural aspects of the abolishment of Appellant's position. Ms. Gilbert was informed of the reasons for the job abolishment; the effective date of the abolishment; her accumulated retention points; her right to appeal to this Board; her right to request and receive a copy of the relevant administrative code provisions; her right to displace other employees, if available; her right to reinstatement or reemployment; and her option to convert approved leave. (Gilbert; Serio; Appellee Exhs. 5, 7, 8, 10)

Abolishment means the permanent deletion of a position from the organization or structure of an appointing authority predicated upon a lack of continued need for the position due to reorganization for efficient operation, economy, or lack of work. R.C. 124.321(D). This definition presents three tests that must be met in order to abolish a position. First, there must be a permanent deletion of a position from the organization. Second, that deletion must be made due to a lack of continued need for the position, expected to last over one year. Third, the lack of continued need must be justified by either reorganization for efficient operation, reasons of economy, or lack of work. O.A.C. 124-7-01(A)(1). R.C. 124.321(D)(1) provides that an appointing authority may abolish positions "for any one or any combination" of the three listed reasons: (1) reorganization for efficient operation; (2) economy; or (3) lack of work.

Appellee cites reorganization for efficiency and economic reasons as justification for the abolishment of Appellant's position. Appellee presented uncontroverted evidence of continuous funding cuts. From fiscal year 2009 to fiscal year 2012, Appellee's budget was reduced from \$91 million in state subsidy to

approximately \$60 million. (Ellinger) Ms. Serio explained at hearing that Appellee used the phrase, "due to a declining budget within the University," to explain in plain language that economic reasons were, in part, the basis for the abolishment of Ms. Gilbert's position. Appellee's abolishment of positions that it no longer needed following the migration away from the mainframe computer system resulted in an annual savings of more than \$83,000.

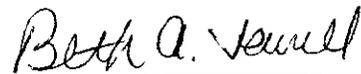
Through Mr. Ellinger's testimony, Appellee also presented uncontroverted evidence that Ms. Gilbert's position was abolished as part of the reorganization of the information technology department for increased efficiency. Mr. Ellinger wrote in his written rationale, "after observing the operation of the Information Technology Services for 20 months, it has become apparent to me that the current staffing structure is not efficient and in the best interest of the smooth operation of the University." (Appellee Exh. 3) Mr. Ellinger also testified that staffing the help desk with full-time employees who provide a higher level of information technology support has resulted in serving more customers and covering more hours of the day. (Ellinger)

In addition, an appointing authority must successfully rebut a valid prima facie showing of "bad faith," should one be demonstrated. See Blinn v. Bureau of Employment Services (1985), 29 Ohio App.3d 77. The evidence in the record regarding Appellee's abolishment of Ms. Gilbert's part-time Computer Operator 1 position does not support a finding of bad faith. Mr. Ellinger presented uncontroverted evidence of the migration away from the mainframe computer system and the resulting elimination of the need for the Computer Operator 1 and Software Specialist 1 positions that performed duties related to the mainframe computers. Ms. Gilbert does not dispute that the job duties she performed from 2004 to 2010 doing mainframe and printing duties no longer exist. However, she questions why her job was abolished after she was trained for and performed weekend Level 1 technical support/help desk duties for nearly two years during the time in which Appellee completed its migration away from the mainframe computer system. Appellee has explained why this occurred. Ms. Gilbert received some basic training in order to provide Level 1 technical support during the transition process; however, during this time she also performed the remaining Computer Operator 1 duties until such time as the migration was completed. Mr. Ellinger also explained that he wanted to complete the reorganization and staffing of the help desk with full time TSS employees before abolishing the mainframe-related positions of Computer Operator 1 and Software Specialist 1. Finally, Mr. Ellinger explained that he had determined over his twenty months of employment that full time computer support employees with a higher level of technical skills provided services with an increased

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level of efficiency to the information technology department's customers.<sup>3</sup>

Appellee has demonstrated by a preponderance of the evidence that it has followed the procedural and substantive requirements set forth in R.C. 124.321-124.327 to abolish Appellant's position. Ms. Gilbert has not demonstrated that Appellee acted with bad faith or in an attempt to subvert the purposes of the civil service system. Therefore, I respectfully **RECOMMEND** that the abolishment of Ms. Gilbert's position be **AFFIRMED**.



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BETH A. JEWELL  
*Administrative Law Judge*

BAJ:

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<sup>3</sup> Appellant Exhibit A, Ms. Gilbert's performance evaluation for the time period from September 2010 to May 31, 2011, actually supports Mr. Ellinger's opinion. Ms. Gilbert wrote in the "Comments by Employee" section of her evaluation, "As a weekend only employee, it's sometimes difficult to keep up with the day-to-day TSC routines and processes[.]"